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No. 73-407

In the Supreme Court of the United States

OCTOBER TERM, 1973

RICHARD A. LAUCHLI, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The issues presented by the petition include whether forfeiture of firearms as a consequence of violation of a gun control statute is barred by the Second Amendment, whether firearms and other property were seized from petitioner in violation of the Fourth Amendment, and whether the forfeitures of petitioner's property violated his Fifth Amendment privilege against self-incrimination.

This petition seeks a writ of certiorari to review five decisions of the court of appeals which held, respectively, (1) that petitioner's 1965 conviction for unlawfully dealing in and transferring firearms in violation of former 26 U.S.C. 5801, 5802, 5811, 5813 and 5814, which he attacked collaterally,[1] was not invalid

[1] Petitioner's conviction was affirmed on direct appeal. *United States* v. *Lauchli*, 371 F. 2d 303 (C.A. 7).

on the ground that compliance with the statute would have deprived him of his privilege against compulsory self-incrimination (C.A. 7, No. 72-1247, Pet. App. 1-12); (2) that petitioner could not relitigate in a forfeiture proceeding the legality of a seizure which had previously been held lawful in a criminal prosecution, and otherwise upholding the legality of a forfeiture growing out of his 1969 conviction for violation of 18 U.S.C. 922 and 923 and 26 U.S.C. 5801, 5802, 5812, 5841, 5842, 5845, and 5861 (C.A. 7, No. 72-1251, Pet. App. 13-18);[2] (3) that a motion filed on July 28, 1971, for return of firearms seized in June 1965 was an action in the nature of replevin, which was barred by the six year statute of limitations contained in 28 U.S.C. 2401(a) (C.A. 7, No. 72-1355, Pet. App. 19-22); (4) that petitioner's further collateral attack upon his 1965 conviction on grounds of bias on the part of the trial judge, unnecessary judicial delay in disposing of his collateral attacks, and failure to grant him an evidentiary hearing on thirteen legal issues which he raised collaterally was without merit (C.A. 7, No. 72-1401, Pet. App. 23-25); and (5) that the forfeitures growing out of petitioner's 1965 conviction were not invalid under *United States* v. *United States Coin & Currency*, 401 U.S. 715, both because his self-incrimination contention was without merit and because, in any event, the forfeitures rested in part upon violations of a statute to which the self-incrimination contention was inapplicable (C.A. 7, No. 72-1433, Pet. App. 26-28).

The self-incrimination contention which petitioner raises here is fully and adequately answered in the opinions in Nos. 72-1247 (Pet. App. 1-12) and 72-1433

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[2] The conviction was affirmed in *United States* v. *Lauchli*, 444 F. 2d 1037 (C.A. 7), certiorari denied, 404 U.S. 868.

(Pet. App. 26-28), upon which we rely. His claim of unlawful seizures is fully and adequately answered in the opinions in Nos. 72-1251 (Pet. App. 13-18) and 72-1355 (Pet. App. 19-22), upon which we also rely. His Second Amendment contention was long ago rejected by this Court in *United States* v. *Miller*, 307 U.S. 174.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1973.

(801)-1973-10